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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

THE SECRETARY OF AGRICULTURE
CLERK

In re:

E. I. Whitmire d/b/a Calico
Livestock Farm

Respondent

) P & S Docket No. D-99-0001
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Decision Without Hearing
By Reason of Admissions

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §181 *et seq.*) hereinafter the Act, by a complaint filed on October 5, 1998, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA). The complaint alleges that Respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. §201.1 *et seq.*) by: (1) issuing insufficient fund checks in payment for livestock purchases; (2) failing to pay, when due, for livestock purchases; and (3) failing to pay the full purchase price of livestock. The complaint requests a finding that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§213(a), 228b). The complaint also requests an order that Respondent cease and desist from the violations found to exist and that Respondent be suspended as a registrant under the Act.

A copy of the complaint was served on Respondent on October 15, 1998. Respondent filed an answer on November 5, 1998, in which he admits: (1) the jurisdictional allegations of Section I of the complaint; (2) that Respondent issued insufficient fund checks in payment for

livestock purchases; (3) that Respondent failed to pay, when due, for livestock purchases; and (4) that Respondent failed to pay \$12,656.56 in livestock purchases and that said amount remains unpaid.

Respondent's answer constitutes the admission of the material allegations of fact contained in the complaint. The admission of the material allegations of fact contained in a complaint constitutes a waiver of hearing, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139). Complainant moves for the issuance of a Decision and the following Decision and Order is issued without further proceeding or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Findings of Fact

1. E. I. Whitmire is an individual doing business as Calico Livestock Farm, hereinafter referred to as Respondent Whitmire, whose mailing address is 2151 Greencrest Road, Gainesville, Georgia 30501.
2. The Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for his own account and as a market agency buying livestock on commission basis.
3. The Respondent, at all times material herein, was registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and as a market agency to buy livestock on a commission basis.
4. Respondent Whitmire, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth below, purchased livestock and in purported payment issued checks which were returned unpaid by the bank upon which they were drawn

because Respondent did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

<u>Purchase Date</u>	<u>Seller</u>	<u># of Head</u>	<u>Amount of Check</u>	<u>Check Number</u>
06/10/97	Lanier Farmers Livestock Corp.	22	\$9,008.46	1234 ¹
06/12/97	Calhoun Stockyard	29	7,166.50	1237 ²
06/19/97	Calhoun Stockyard	7	1,300.00	1246 ³

5. Respondent Whitmire, in connection with his operations subject to the Act, on or about the dates and in the transactions listed above in number 4, and in the transactions set forth below, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

<u>Purchase Date</u>	<u>Seller</u>	<u>Amount Due</u>	<u>Payment Due Date</u>	<u>Payment Date</u>
04/24/97	Calhoun Stockyard	\$14,232.81	04/25/97	05/08/97 ⁴
06/03/97	Lanier Farmers Livestock	15,805.20	06/04/97	06/18/97 ⁵
06/11/97	Mid-Georgia Livestock Mkt.	9,296.79	06/12/97	06/26/97 ⁶

¹Respondent Whitmire made a partial payment in the amount of \$5,979.00 on 10/15/97 which was applied to this livestock debt thereby leaving a remaining amount due of \$3,029.46.

²Respondent, Whitmire made two partial payments of \$500.00 on 10/2/97 and \$2,133.60 on 10/23/97 which was applied to this livestock debt thereby leaving a remaining amount due of \$4,532.90.

³The check issued in payment for this transaction was \$44.40 short of the total amount due. Respondent Whitmire has made no payments on this particular livestock debt.

⁴The check tendered by Respondent Whitmire cleared on redeposit.

⁵The check tendered by Respondent Whitmire cleared on redeposit.

⁶The respondent paid \$9,006.46 of the livestock amount due with check number 1236 and the remaining balance of \$288.33 was paid by the Respondent by deductions from commission checks.

<u>Purchase Date</u>	<u>Seller</u>	<u>Amount Due</u>	<u>Payment Due Date</u>	<u>Payment Date</u>
06/14/97	Abingdon Stockyard Exchange	7,457.85	06/16/97	07/05/97 ⁷
06/16/97	D & N Livestock Service	6,106.53	06/17/97	07/17/97 ⁸
06/17/97	Lanier Farmers Livestock	3,749.80	06/18/97 ⁹	

6. As of September 1, 1998, there remained unpaid a total of \$12,656.56 for such livestock purchases.

Conclusions

By reason of Finding of Fact numbers 4,5, and 6, Respondent has willfully violated sections 312(a) & 409 of the Act (7 U.S.C. §§213(a) & 228b).

Order

Respondent E.I. Whitmire, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Failing to pay the full purchase price of livestock.

⁷The Respondent overpaid the livestock amount due by \$1,117.30.

⁸The Respondent's livestock debt was paid by a third party.

⁹Respondent Whitmire has made no payment on this livestock debt.

Respondent E. I. Whitmire is hereby suspended as a registrant under the Act for a period of five (5) years. Provided, however, that upon application to Packers and Stockyards Programs a supplemental order may be issued terminating the suspension of the respondent at any time after 90 days upon demonstration by Respondent that the livestock sellers identified by the complaint in this proceeding have been paid in full and provided further, that this order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or a packer after the expiration of the 90 day period of suspension and upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings thirty-five (35) days after the date of service on Respondent unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. §1.145).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.

this 3rd day of November, 1999

Dwight A. Baker

Administrative Law Judge